

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 23-00010-CJC (DFMx)

Date: February 3, 2023

Title: ANDREA MALLUL ET AL. V. THE WALT DISNEY COMPANY ET AL.

PRESENT:

HONORABLE CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE

Rolls Royce Paschal
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

None Present

None Present

PROCEEDINGS: (IN CHAMBERS) ORDER TO SHOW CAUSE WHY THIS ACTION SHOULD NOT BE REMANDED

On January 4, 2023, Defendant Walt Disney Parks and Resorts U.S., Inc. (“Disney”) removed this action from the Superior Court of California, County of Orange. (See Dkt. 1 [Notice of Removal, hereinafter “Removal”] ¶ 10.) Plaintiffs Andrea Mallul, as the successor in interest to the Estate of Joanne Aguilar, Andrea Mullul, individually, and Zenobia Hernandez, individually (“Plaintiffs”), brought several state-law claims based on the death of Joanne Aguilar, who allegedly died from complications from a surgery to treat injuries that she sustained while disembarking an attraction at a Disney property. (See *id.* ¶ 9.) Disney alleged that federal question jurisdiction exists because the case “is a civil action alleging a violation of 42 U.S.C § 12132.” (*Id.* ¶ 10.)

“[F]ederal law” did not, however, “create[] the cause of action” under which Plaintiffs sue. *Empire Healthcare Assur., Inc. v. McVeigh*, 547 U.S. 677, 690 (2006) (citation omitted). Contrary to Disney’s assertion, Plaintiffs did not bring a claim under the cited federal statute, commonly known as the Americans with Disabilities Act (“ADA”). Rather, they brought a claim for negligence per se predicated on a violation of the ADA. (See Dkt. 1-1 [Summons and Complaint] ¶¶ 49–61.) Indeed, Disney seems to acknowledge as much elsewhere in its notice of removal. (See Removal at [noting that Plaintiffs “alleg[ed] the following causes of action: . . . (5) negligence per se – violation of the Americans With Disabilities Act”].)

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Page 2

Since federal law was not the source of the cause of action, federal question jurisdiction likely exists only if “[t]his case . . . fit[s] within the special and small category” of state-law claims that arise under federal law for purposes of 28 U.S.C. § 1331. *Empire*, 547 U.S. at 699. For a case to fit within that category, a federal issue must be “(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.” *Gunn v. Minton*, 568 U.S. 251, 258 (2013).

Because of the narrowness of this category and the lack of details on the grounds for removal in Disney’s notice, Disney is hereby **ORDERED** to show cause in writing, not to exceed **fifteen (15) pages** in length, why this action should not be remanded for lack of subject matter jurisdiction by **February 17, 2023**. While Plaintiffs are not obligated to respond, to the extent that they wish to do so, Plaintiffs are **ORDERED** to file their response, not to exceed **fifteen (15) pages** in length, by **February 27, 2023**.

jso

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